IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RONALD McALLISTER, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 01-2925 DV**
	)	
CITY OF MEMPHIS, et al.,	)	
	)	
Defendant.	)	
	)	

ORDER DENYING DEFENDANT CITY OF MEMPHIS' MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant City of Memphis' ("Defendant" or "the City") motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure. The complaint, brought *inter alia* pursuant to 42 U.S.C. § 1983, alleges violations of Plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution. For the following reasons, Defendants' motion is DENIED.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

On November 12, 2000, the Memphis Police Department received a report of a burglary. Police officers Hunt, Polk, and Bryant Plaintiff detained Plaintiff because he allegedly fit the description of the burglary suspect. The officers instructed Plaintiff to spread his legs and put his hands behind his back. Plaintiff alleges that he attempted to tell the officers that he had an injured leg, but they ignored him. The officers handcuffed Plaintiff. While placing the handcuffs on

[1]For purposes of this motion, the Court accepts the facts found in section I to be true. They are taken from the Complaint, Defendant's motion for summary judgment, and Plaintiff's memorandum in opposition to Defendant's motion for summary judgment.

Plaintiff, Officer Hunt noticed tattoos on Plaintiff's hands and allegedly started cursing Plaintiff. Plaintiff next alleges that Officer Hunt struck Plaintiff on his face and kicked his leg, knocking him to the ground. After allegedly kicking Plaintiff again, Officer Hunt placed Plaintiff in the squad car and took him to the scene of the burglary, where the complainant stated that Plaintiff was not the burglary suspect. The officers released Plaintiff, after which Plaintiff "limped away." Compl. at ¶ 10. Plaintiff maintains that he suffered serious injuries, as well as severe emotional distress.

Plaintiff filed a complaint with the Memphis Police Department Internal Affairs Bureau ("IAB"), also known as the Inspectional Services Division, on November 13, 2000, the day after the incident occurred. The complaint alleged that Officer Hunt violated the Memphis Police Department ("MPD") policies concerning unnecessary force and "courtesy."[2]

The policy of the MPD provides for two different stages of an investigation. First, the IAB conducts an investigation and determines whether or not there is sufficient evidence to sustain an allegation. Second, there is a disciplinary hearing for final adjudication of the incident. During the IAB investigation, three witnesses told the investigator that they saw an officer strike the Plaintiff. The witnesses each refused to sign a statement. It is not uncommon for witnesses to be reluctant to provide statements alleging police misconduct. Pl. Resp. at 11. Officer Polk stated that he saw Officer Hunt's arm move in an upward motion but did not actually witness Officer Hunt hit Plaintiff.[3]

The IAB sustained Plaintiff's charge of unnecessary force but found insufficient evidence

[2]The courtesy policies apparently regulate the way in which police officers verbally communicate with the public.

[3]Defendant's Statement of Undisputed Facts states that Officer Polk saw Officer Bryant's arm move in an upward motion, it appears that this was an error and that Defendant actually meant Officer Hunt.

to sustain the allegation of violation of the courtesy regulation. The next step in the process is a disciplinary hearing. At the hearing, the hearing officer, Major Larry Young ("Young") only called Officer Hunt as a witness and never spoke with Plaintiff. Young found that there was no evidence to sustain the charge of excessive force. Because Hunt had a history of numerous complaints, Young counseled Hunt on proper conduct.

Following the hearing, Deputy Chief Janet Pilot ("Pilot"), the commander of the IAB, sent Plaintiff a letter stating that it had been determined that Officer Hunt used unprofessional language and unnecessary force with Plaintiff and that appropriate action had been taken. Pl.'s Mem., ex. 14. It is IAB policy to send a letter to every complainant stating that appropriate action was taken, even when no action at all was taken. Pl.'s Mem. ex. 2 at 53-56.

Plaintiff filed the instant complaint on November 9, 2001, alleging that Defendant violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983. On October 29, 2004, Defendant filed a motion for summary judgment. Defendant contends that a full investigation was conducted, after which all charges were dismissed against Officer Hunt. As a result, Defendant asserts that no discipline was required. Defendant further maintains that all officers are properly trained. Finally, Defendant argues that because it investigated the incident, it did not ratify any inappropriate behavior of the officers.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In other words, summary judgment is appropriately granted "against a party who fails to

make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

The party moving for summary judgment may satisfy its initial burden of proving the absence of a genuine issue of material fact by showing that there is a lack of evidence to support the nonmoving party's case. Id. at 325. This may be accomplished by submitting affirmative evidence negating an essential element of the nonmoving party's claim, or by attacking the opponent's evidence to show why it does not support a judgment for the nonmoving party. 10a Charles A. Wright et al., Federal Practice and Procedure § 2727, at 35 (2d ed. 1998).

Facts must be presented to the court for evaluation. Kalamazoo River Study Group v. Rockwell Int'l Corp., 171 F.3d 1065, 1068 (6th Cir. 1999). The court may consider any material that would be admissible or usable at trial. 10a Charles A. Wright et al., Federal Practice and Procedure § 2721, at 40 (2d ed. 1998). Although hearsay evidence may not be considered on a motion for summary judgment, Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp., 176 F.3d 921, 927 (6th Cir. 1999), evidentiary materials presented to avoid summary judgment otherwise need not be in a form that would be admissible at trial. Celotex, 477 U.S. at 324; Thaddeus-X v. Blatter, 175 F.3d 378, 400 (6th Cir. 1999).

In evaluating a motion for summary judgment, all the evidence and facts must be viewed in a light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Wade v. Knoxville Utilities Bd., 259 F.3d 452, 460 (6th Cir. 2001). Justifiable inferences based on facts are also to be drawn in favor of the non-movant. Kalamazoo River, 171 F.3d at 1068.

Once a properly supported motion for summary judgment has been made, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To avoid summary judgment, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586.

III. ANALYSIS

Defendant seeks summary judgment as to Plaintiffs' claim pursuant to 42 U.S.C. § 1983 for violation of the Fourth and Fourteenth Amendment to the United States Constitution, averring that no genuine issue of material fact exists. Title 42 of the United States Code, section 1983 states in pertinent part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. In Monell v. Dep't of Social Servs., 436 U.S. 658, 691 (1978), the Supreme Court held that municipalities may be subject to damages under 42 U.S.C. § 1983. However, the Monell Court made it clear that liability under § 1983 may not be imposed on a municipality merely because it employed an individual who engaged in some form of unconstitutional conduct. See id. at 691. A municipality cannot be held liable for an injury caused by its agents or employees under § 1983 based on a theory of respondeat superior. See id. Instead, a municipality may only be liable for a

constitutional tort where the action occurred pursuant to a municipal policy, practice, or custom. Id. In order to hold the municipality liable, the municipal policy must be the "moving force" behind the constitutional violation. City of Canton v. Harris, 489 U.S. 378, 389 (1989). However, the challenged policy need not be unconstitutional itself. Rather, a municipality may be liable if an employee's application of an otherwise constitutional policy leads to an unconstitutional result. See id. Either an affirmative policy or a policy of inaction can suffice to support municipal liability. See Doe v. Claiborne County, 103 F.3d 495, 508 (6th Cir. 1996). Consequently, a cognizable § 1983 claim against a municipality includes allegations that (1) agents of the municipality, (2) while acting under color of state law, (3) violated the plaintiff's constitutional rights, and (4) a municipal policy or policy of inaction was the moving force behind the violation. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 167-69 (1993).

Plaintiff's complaint alleges that Officer Hunt, an agent of the City, while acting under color of state law, violated Plaintiff's constitutional rights by physically and verbally abusing him, and that the City was the "moving force" behind the violation.

Defendant asserts that Plaintiff has not stated a claim pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's constitutional rights because Plaintiff has not demonstrated that Defendant had a policy, practice, or custom that led to Plaintiff's injury. Citing City of Canton, Defendant argues that in order to be liable, 1) it must have such a policy; 2) it must have demonstrated deliberate indifference to people's rights in development of the policy; 3) there must be a direct causal link between the City's policy and the deprivation of Plaintiff's rights; and 4) Plaintiff must show more than a single incident to demonstrate a policy or custom. See id. at 385-86. Specifically, Defendant argues that Plaintiff has failed to demonstrate that his rights were violated by Defendant's

policies concerning the investigation, discipline, or training of the officers involved in the incident, and, as such, Defendant did not ratify the conduct of the officers.

Defendant contends that pursuant to the holding in Dyer v. Lexington-Fayette Urban County Govt., 1995 U.S. App. LEXIS 37042 (6th Cir. 1995), only when there is no investigation at all may a municipality be held liable. However, Defendant misreads the holding in Dyer. The Dyer court does not require that no investigation take place in order to find liability, only that there is no *meaningful* investigation. Id. at *5. In Dyer, the Court found that a meaningful investigation was, in fact, conducted. Id. at *4. Similarly, in the instant case, Plaintiff contends that no meaningful investigation took place.

Defendant, on the other hand, maintains that a complete investigation was conducted of the alleged misconduct of the officers. Plaintiff admits that the first step of the investigation, the investigation by IAB investigator, Sergeant Charnes ("Charnes"), was a meaningful investigation. Charnes relied on the verbal statements of the three witnesses, the written statements of the other officers present at the scene, and Officer Hunt's card file, which includes a list of prior complaints. All three of the witnesses stated that they saw an officer strike Plaintiff. Officer Polk did not actually see Hunt strike the Plaintiff, but his account indicates that Polk was aware that it likely had occurred. The IAB investigation sustained the charge of unnecessary force against Hunt, and the claim moved to the second stage of the process. It is at this stage that Plaintiff contends that no meaningful investigation was conducted.

Young conducted the hearing. However, Young did not consider the statements of the witnesses. He did not interview the three police officers who were present at the time the incident occurred. This is true despite the fact that Charnes had determined that Polk's statement deserved

considerable weight because it is unusual for an officer to admit that he believes that another officer struck a citizen. Although the IAB is not permitted to consider previous complaints against the officer being investigated, a hearing officer is allowed to consider them. Thus, Young knew that Hunt had six prior complaints against him. Moreover, although Young was permitted to subpoena anyone he believed would be helpful, the only person he subpoenaed was Hunt. Young never spoke with Plaintiff, and Plaintiff was not allowed to attend the hearing. Additionally, the MPD's policy states that a presumption of guilt is established when the IAB sustains a charge against an officer. In spite of this seemingly overwhelming evidence against Hunt, Young dismissed the complaint. Following the hearing, the City sent Plaintiff a letter informing him that there was sufficient evidence to sustain Plaintiff's allegations and that the appropriate action had been taken. Deputy Chief Pilot admitted in her deposition that the tone of the letter was misleading. Pl's Resp. ex. 2 at 72. This could be evidence that Defendant's actions may have been a result of deliberate indifference to the Plaintiff's rights. Furthermore, as it is IAB's policy to send a letter to every complainant stating that appropriate action was taken, even when no action at all was taken, (Pl.'s Mem. ex. 2 at 53-56), such a practice may indicate Defendant's ratification of its officers' misconduct.

Nevertheless, Defendant argues that Plaintiff must show "a history of widespread abuse that has been ignored by the City." Def.'s Mem. at 5 (quoting Berry v. City of Detroit, 25 F.3d 1342, 1354 (6th Cir. 1984)). However, in Berry, the plaintiff offered no evidence to establish a pattern of abuse. In the instant case, Plaintiff offered evidence of numerous prior complaints filed against Hunt that were similarly dismissed. Furthermore, in Marchese v. Lucas, 758 F.2d 151 (6th Cir. 1985), the Court held that a single incident of failure to investigate was sufficient to find a policy of

inaction. Id. at 184. Practices engaged in by the MPD can be recognized as policies of acceptance if they are not stopped. "Courts are not required to ignore the fact of life that policies can be and often are subtly but effectively promulgated by seemingly benign conduct." Leach v. Shelby County Sheriff, 891 F.2d 1241, 1246 (6th Cir. 1989).

Therefore, the Court finds that a genuine issue of material fact exists as to whether a meaningful investigation was conducted. Additionally, based on the IAB investigation a genuine issue of material fact exists as to whether Defendant's decision not to discipline Officer Hunt indicates deliberate indifference on the part of the City, as envisioned by the Supreme Court in City of Canton, 489 U.S. at 397. The Court thus finds that there remains genuine issues as to a material fact concerning Plaintiff's allegations that his constitutional rights were violated pursuant to 42 U.S.C. § 1983. Accordingly, the Court denies Defendant's motion for summary.

IV. CONCLUSION

For the reasons stated herein, the Court **DENIES** Defendant's motion for summary judgment.

IT IS SO ORDERED this _____ day of February, 2005.

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BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE